

**Applications delegated to Director of Planning,
Housing & Environmental Health to determine**

TM/20/00382/LDE

Location: Borough Green Sand Pit Maidstone Road Platt Sevenoaks Kent TN15 8AR

Proposal: Lawful Development Certificate Existing: Use of Borough Green Quarry as haulage operators centre

Target Date: 13 April 2020

EOT Target Date:

1. Description of Proposal:

1.1 This is an application for a lawful development certificate for an existing use (LDE) that seeks to establish the use of the Borough Green Quarry site as a mixed use Quarry and "haulage operator's site". The application form specifies the use class as "other" and appears to suggest that what is being sought is confirmation that the use class of the whole site is now a sui generis use, a "class of its own".

2. The Site:

2.1 The red edge site plan submitted for which the certificate of lawfulness is sought encompasses the entire Borough Green Quarry area, including maintenance areas and workshops associate with the quarry, the wheel washing station and the site office. It also includes areas of the quarry in which backfill and restoration has been completed, and part of the access roads into the active sand extraction areas.

2.2 The quarry itself has a long history and covers a wide area, located north of the railway line near Borough Green and Platt. Sand extraction and backfill of inert waste are on-going operations. The site lies within the Green Belt and south of the Kent Downs AONB.

3. Planning History (relevant):

TM/61/10750/OLD

Refuse

11 January 1961

Excavation of sand. Southern part O.S. Field 122 - north boundary O.S. Field 130 Platt

TM/16/00110/MIN

Approved

8 June 2016

Vary the conditions 2 and 17 of planning permission TM/07/00512/MIN (Northern extension of existing sand quarry and restoration to agriculture, amenity and woodland using imported inert waste materials (KCC ref. TM/07/TEMP/0005))

TM/17/01490/MIN

Approved

6 September 2017

Extension of existing sand extraction operations with restoration to original levels using imported inert fill. KCC ref: KCC/TM/0307/2016

4. Consultees:

- 4.1 Wrotham PC: Wrotham Parish Council ("WPC") is lead parish in a Parish Alliance that is represented by a legal team headed by Counsel. Having asked Counsel for some initial comments regarding this application, WPC has the following comments and request.
- 4.2 The application could potentially result in the MPA losing all control over HGVs entering and leaving the site in both terms of numbers of vehicle trips and operational hours. This is because the application has been framed in such a way that it would become impossible to differentiate between vehicles transporting sand for the quarry application and vehicles transporting sand for the logistic companies operations.
- 4.3 We have been informed that local Parish Councils and the Local KCC Member have received numerous complaints regarding noise, out of hour's use and dirt on the roads as a result of this quarry's previous day and unconsented night operations.
- 4.4 It is therefore important when judging this matter that all the available evidence is gathered and considered at length, as an unregulated regime could continue to have significant impacts on local residents. The evidence base submitted in support of the application, when you consider the wealth of available documentation that could be provided if the alleged uses are true, is extremely restricted.

The Submitted Application

- 4.5 The application is made under Section 191 of the Town and Country Planning Act 1990. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 20 specifies the information that must accompany an application made under section 191 of the Town and Country Planning Act 1990. Section 1 requires the land to be specified for the particular use that is being

applied for and Section 2a states that a scaled plan is required for the specified land.

4.6 Section 4 refers to lands that are in multi-use and requires that the application plan must indicate which part of the land is required for each use. The application states that there is a quarrying use and that has some vehicles that are associated with that use. It also asserts that there are companies that supply logistical services and lists the following:

- Lime Logistics
- Santander Salt
- Sheerness Recycling
- Medway Aggregates
- TD Express

4.7 2.4 The application cover letter states as follows. "Lime Logistics was granted a Goods Vehicle Operating License (GVOL) in 2002 to operate heavy goods vehicles from Borough Green Quarry. This GVOL has been maintained since 2002 and has allowed HGVs associated with all the Borough Green group of companies to operate from the Borough Green Quarry. The GVOL allows HGVs to park at the specific listed location overnight and for Borough Green Quarry to function as a Haulage Operators Centre. The Borough Green Group Transport Office operates from the Borough Green Quarry and is accommodated in the office buildings on the site." Ref: Letter from Kate Holland dated 31 Jan 20

4.8 The letter states that Lime Logistics was granted a Goods Vehicle Operating License (GVOL) license in 2002 but there is a general lack of clarity regarding currently how many HGVs and how many trailers are associated with each company and where each company is registered to operate; clarification is required.

4.9 The application cover letter goes on to state. "The haulage uses have occurred at the Site since 2002 continuously and operate alongside but separate from the Quarrying activities. The supporting Affidavits detail how the Haulage Operators Centre use has functioned as a separate entity to the Quarrying activities and that it is these activities that result in HGV movements outside of the lawful operation hours for quarrying activities." Ref: Letter from Kate Holland dated 31 Jan 20

4.10 Considering the requirements of Article 39 the applicant should have provided scaled maps that differentiate areas of use within the greater area. It would be expected to be able to see the following areas denoted on the scaled map.

1. The Haulage Operators Centre
2. Parking area for quarry vehicles
3. Parking area for logistic company vehicles

4. Quarry areas

5. Recycling Areas

4.11 By what planning application was the Haulage Operators Centre consented and if unconsented then when was it built?

Additional Evidence

4.12 There is a paucity of evidence to support the alleged extensive uses and one obvious source of factual information is the Mineral Planning Authority ("MPA"). There has been no response to consultation in this regard, which is somewhat perverse as they regularly inspect the quarry with a view to checking all areas of condition compliance. These are recent minutes that shed light on the extensive information accumulated each year by the painstaking work of Officer's of the MPA.

4.13 The following are minutes from KCC's recent Planning Regulation Committee who are tasked with regular monitoring of sand quarries amongst others.

"Monitoring Monitoring of permitted sites and update on chargeable monitoring. 15. In addition to our general visits to sites, we also undertake routine visits on permitted sites, to formally monitor against the statutory monitoring charging scheme. This provides useful compliance checks against each operational activity and an early warning of any alleged and developing planning contraventions. Resolved or mainly resolved cases requiring monitoring 16. Alongside the above monitoring regime there is a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur. This accounts for a significant and long-established pattern of high frequency site monitoring. Cases are routinely reviewed to check for compliance and where necessary are reported back to the Committee."

Reference: KCC Regulation Committee, Tuesday, 28th January, 2020- Agenda Item 7

4.14 The Parish Alliance has today issued an EIR/FOI request for all site reports on Borough Green Sandpit's compliance regimes over the last ten years. Once we have received the KCC Site Compliance Reports and the requested information from the applicant, then we will ask our legal team to make further comment regarding this spartan application. In the light of all of this additional information the Parish Alliance should be in a better position to comment on these alleged uses by the Borough Green Sandpits Group of companies. Currently it is considered that the lack of sufficient mapping detail results in this application being invalid for further consideration

4.15 Wrotham PC further comments 18th August: WPC has further considered the above referenced application in the light of new evidence consisting of fourteen

KCC quarry reports over ten years. A summary of the findings of the reports is attached as '20-07-2 KCC Quarry Site Visits 2010-2020 Summary' and is provided to assist Officers. The document lists conditions that are relevant to the LDC, HGV movements and noise for example. It also lists all conditions that the Officer has concerns about and these are emboldened (our emphasis). In this way the document gives an overview of the reports and allows the reader to select those quarry reports that need to be looked at in detail.

- 4.16 Borough Green Sand Pits Limited has made an application for a Certificate of Lawful Development for the dual use of Borough Green Sand Pit (Platt Industrial Estate) for both quarrying and as a "Haulage Operators Centre".
- 4.17 As part of the evidence to support the application, the applicant has submitted details of its company's Goods Vehicle Operating Licence (GVO Licence) OK0229987. The description 'Haulage Operators Centre' is not a term used by the Goods Vehicles Licensing Act, so we assume the applicant is applying for a Certificate of Lawful Development as an 'Operating Centre', as defined in the Goods Vehicles (Licensing of Operators) Act 1995 (the Act), and the Goods Vehicles (Licensing of Operators) Regulations 1995.
- 4.18 An 'operating centre' is the base or centre at which a goods vehicle is normally kept when not in use (1), and is a key requirement of a GVO licence. The GVO licence requires the operator to list his operating centres and the vehicles intended to be kept there. The operator has to satisfy the Traffic Commissioner that the operating centres are suitable for the number of vehicles that will be based at each operating centre. Good Vehicle Operators Licence OK0229987 lists five different operating centres:

Location	Vehicle	Trailer
Borough Green	7	4
Tonbridge	8	2
Hythe	6	2
Sittingbourne	10	5
Rochester	19	8

- 4.19 A total of 50 vehicles and 21 trailers are located at five different operating centres. GVOL OK0229987 indicates that the operating centre at Borough Green has been assessed by the Traffic Commissioners and they have placed a condition on the licence that the site is suitable for 7 vehicles and 4 trailers.
- 4.20 The applicant appears to suggest in their letter that the GVO licence allows all the company's Heavy Goods Vehicles (HGVS) to be parked at the Borough Green

site. This impression is also given in the Statutory Declaration made by David Dixon and in the Declaration by Robert Body.

- 4.21 If these assertions were correct the company would be contravening the condition placed on the Borough Green Site by the Traffic Commissioner. Section 23(6) of The Goods Vehicles (Licensing of Operators) Act makes it an offence to contravene any condition attached to an operating centre.
- 4.22 In Michael Stanley's Statutory Declaration it states that he collects his vehicle before 0700 from the Borough Green Operating Centre before quarrying operations start and returns the vehicle in the evening.
- 4.23 This would suggest that there is a maximum of 14 daily traffic movements associated with the operating centre at Borough Green. Planning permission TM/98/1843/MR100, as amended, allows for 60 HGV movements per day. This permission was granted on 15 March 2000.
- 4.24 The applicants GVO License was granted in 2002 and one of the relevant considerations of the Traffic Commissioner would have been information about any planning permission relating to the site.
- 4.25 The Commissioner would therefore have been aware of the HGV movement restriction when granting the license, and also aware that the applications for the operating centre at Borough Green was made in connection with the planning permission for the quarry operation. It follows that the 14 daily traffic movements from the operating centre were included within the current planning permission of 60 HGV movements.
- 4.26 The use of the site at Borough Green as an operating centre is a licensed activity which is granted and controlled by the area Traffic Commissioner, 'Authorisation under an operator's licence does not convey any approval under planning law'.
- 4.27 The letter of application and Declarations, suggest that the Applicant's mode of operation is for vehicles parked overnight at Borough Green to leave the site in the morning unloaded or to arrive and leave loaded. These HGVS are allocated haulage work elsewhere. HGVS from other operating centres, potentially as far away as Hythe, are then driven to Borough Green to work the quarry.
- 4.28 If this assertion were correct, it would be an uneconomic way to manage an HGV fleet. It would also be environmentally damaging and unnecessarily harmful to the local community.

Borough Green Sandpit Operations and Quarry Reports

- 4.29 Borough Green Parish Council (BGPC) first became aware of unusual night time HGV movements from local residents who live around the quarry access onto the A25. They complained in the late summer of 2019 about night time noise

disturbance caused by HGVS leaving site at 4 am and resulted in multiple complaints.

4.30 The quarry reports also illustrate examples of noise disturbance. For example some noise issues arose with residents in Annetts Hall in the summer of 2011. The Nov 2011 reports notes as follows.

“It is understood that there had been some noise issues in the Summer which had prompted a review of working hours and machinery activity in the area of the site closest to nearest housing at Annetts Hall.” Ref. Quarry Report Nov 2011

4.31 In this way such matters are readily recorded and dealt with. There are other incidents of noise disturbance over the recorded 10 years but none due to HGVS operating out of hours. That is not until 2019, when BGPC intervened following public complaints and collected evidence of vehicles leaving at 4am. It was the unusual nature of the disturbance that revealed that the quarry had recently ignored conditioning on the timing and number of HGV movements.

4.32 A reading through of the quarry reports or the quarry précis reveals the detail and diligence that KCC Officers apply to their task of quarry regulation. It is clear that certain matters appear again and again without redress. For example the over tipping of an area of the quarry that raised the level some metres above the consented height. Another being the ignoring of the consented phasing of quarry working that comes to a head in the 2019 Report. One of the constants throughout the decade of reporting is that there are no issues with HGV Movements or vehicle related noise. Particularly as local residents live around the only egress from the quarry to the national road network.

4.33 The same Officer has been conducting all of the site visits, sometimes with a second Officer, and this gives a consistency to the evaluation and reporting; they are therefore familiar with the quarry geography and operations. The assertion that 50 HGVS have been parked overnight, coming and going as required would require large amounts of land and resources on site that would be noticeable and logged by the Officer and this simply isn't the case although all sorts of other condition non-conformities are recorded.

4.34 The following satellite photograph comes from Google Earth with recorded date of 26 October 2018. The Haul Road comes from the west and exits to the east and there is the weighbridge just after a HGV repair facility to the north.